

GERNEY M. CLAIBORNE

MAY 14, 1942.—Ordered to be printed

MR. CAPPER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 5527]

The Committee on Claims, to whom was referred the bill (H. R. 5527) for the relief of Gerney M. Claiborne, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 2007, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 2007, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5527) for the relief of Gerney M. Claiborne, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Line 3, strike out the figures "17" and insert in lieu thereof the figures "15".

Line 9, strike out the words "was injured" and insert in lieu thereof "alleges that he sustained an injury to his spine".

Line 11, strike out "on" and insert "in".

The purpose of the proposed legislation is to waive sections 15 to 20, inclusive, of the United States Employees' Compensation Commission Act of September 7, 1916, as amended, in favor of Gerney M. Claiborne, for injuries sustained while employed at the Post Office Department in Knoxville, Tenn., in November 1938, with provision that no benefits shall accrue prior to the enactment of this act.

Your committee recommends the enactment of the legislation for the reason that it merely waives the time limitations of the Employees' Compensation Commission Act, and allows Gerney M. Claiborne to file claim with the Commission, and his claim to be considered upon its merits.

The facts of the case will be found fully set forth in the report of the Employees' Compensation Commission, dated September 13, 1941, which is appended hereto and made a part of this report, as follows:

UNITED STATES EMPLOYEES' COMPENSATION COMMISSION,
Washington, September 13, 1941.

CHAIRMAN, COMMITTEE ON CLAIMS,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Reference is made to your request for the Commission's report upon the bill (H. R. 5527), for the relief of Gerney M. Claiborne. The bill provides:

"That sections 17 and 20 of the Act entitled 'An Act to provide compensation for the employees of the United States suffering injuries while in the performance

of their duties, and for other purposes,' approved September 7, 1916, as amended (U. S. C., 1934 edition, title 5, secs. 767 and 770), are hereby waived in favor of Gerney M. Claiborne, who was injured in the line of his duty while an employee of the United States Post Office in Knoxville, Tennessee, on November 22, 1938, and his claim for compensation is authorized to be considered and acted upon under the remaining provisions of such Act, as amended, if he files such claim with the United States Employees' Compensation Commission not later than sixty days after the date of enactment of this Act.

"SEC. 2. The monthly compensation which the said Gerney M. Claiborne may be entitled to receive by reason of the enactment of this Act shall commence on the first day of the month during which this Act is enacted."

It appears from the file in this case that Mr. Claiborne in November 1938, while employed as a letter carrier by the Post Office Department at Knoxville, Tenn., is alleged to have sustained injury as the result of being playfully slapped on the back by a fellow worker while watching a card game in the "swing" or recreation room in the post-office building during a lunch period; that the Commission on October 21, 1940, received a claim form (C. A. 4), executed by Mr. Claiborne, in which he made claim for compensation on account of such injury.

A report from Dr. Kyle Copenhaver, dated October 9, 1940, declares that he first examined Mr. Claiborne on December 27, 1939. His report reads in part as follows:

"Neuroma over his sacrum * * * I removed the neuroma on January 12, 1940. He had considerable bleeding following the operation and developed hematoma in the wound, which was drained. At the time I last saw him he was working but complained of considerable pain * * *"

A report from Dr. S. H. Dodge, dated October 17, 1940, discloses that he treated Mr. Claiborne on and after April 29, 1940. His report reads in part as follows:

"Chondro sarcoma region of articulation sacrum and coccyx * * * stated he was struck on back by fellow worker on duty and attributes disease to this injury. * * * Excision of pathology had been attempted by Dr. Kyle Copenhaver. * * * Excision of tumor growth followed by radium and X-ray treatments. * * * At present time patient is in Knoxville General Hospital for hemorrhage intestinal tract evidently peptic ulcer which has required three transfusions of blood * * *"

Since it did not appear that Mr. Claiborne had filed written notice of the alleged injury or claim for compensation within 1 year from the date thereof, as required by the mandatory provisions of sections 15 to 20, inclusive, of the Federal Employees' Compensation Act of September 7, 1916, the Commission was without authority of law to consider the merits of his claim, and Mr. Claiborne was so advised by letter dated November 2, 1940.

Since for the reason stated above the Commission had no authority to award compensation in this case, no inquiry was made relative to the merits of Mr. Claiborne's case, and the Commission can, therefore, express no opinion thereon.

The proposed measure is apparently designed merely to waive in favor of Mr. Gerney M. Claiborne the bar of the time limitations in sections 17 and 20 of the Compensation Act of September 7, 1916, and to leave the Commission free to determine the merits of Mr. Claiborne's claim, and to afford him such measure of relief as the facts, when established, may show him to be entitled to under the Compensation Act. It may be pointed out that the limitation provisions in the compensation law are contained in sections 15 to 20, inclusive. If the bill is to be favorably considered, it is suggested that the reference to sections 17 and 20 in line 3 of the bill be changed to read sections "15 to 20, inclusive".

In thus viewing the bill, the Commission interprets the expression "who was injured in the line of his duty" in line 9 on page 1 of the bill, as descriptive only and as serving merely to identify the alleged disability. As, however, it has sometimes been contended that similar language constituted a legislative determination of the fact of injury and precluded the Commission from determining the facts relative thereto, it is suggested that after the word "who" in line 9 of page 1 of the bill, there be inserted the words "alleges that he."

It is noted that the bill contains no reference as to the nature of the injury on account of which it proposes to extend relief. Such reference is customary and it is suggested that it be added for the purpose of the record and for identification of the case as well as to place a proper limitation upon any relief granted.

In view of the foregoing, the Commission makes no recommendation as to the advisability of the enactment of the bill H. R. 5527.

Very truly yours,

(Mrs.) JEWELL W. SWOFFORD,
Chairman.

STATE OF TENNESSEE,
County of Knox, ss:

Personally appeared before me, the undersigned authority in and for Knox County, Tenn., Mr. Charles C. Burton, with whom I am personally acquainted, and who, being duly sworn according to law, says:

That in November 1938, Mr. A. H. Hollingsworth, superintendent of carriers (at that time but who is now deceased) told your affiant that Wiley King, a carrier in the Knoxville post office, hit Gerney M. Claiborne, also a carrier in the Knoxville post office, on the back while they were in the "swing room" of the Knoxville post office, and that the said Mr. A. H. Hollingsworth (now deceased) told Mr. Wiley King that such foolishness as that might cause Mr. Claiborne to be crippled for life, or might cause his death. Affiant further states that Mr. A. H. Hollingsworth seemed to be very angry with Wiley King when talking to your affiant about the incident.

Affiant states that from the above conversation with the said Mr. A. H. Hollingsworth, superintendent of carriers, in November 1938, that he knows personally that Gerney M. Claiborne reported his injury to Mr. Hollingsworth; but your affiant does not know whether Mr. Hollingsworth made a report to the United States Employees' Compensation Commission about the above related incident.

Further affiant saith not.

CHAS. C. BURTON.

Subscribed and sworn to before me, this 12th day of September 1941.

[SEAL]

MAYME W. HOUSHOLDER,
Notary Public.

My commission expires 17th day of October 1944.

STATE OF TENNESSEE,
County of Knox, ss:

Personally appeared before me, the undersigned authority in and for Knox County, Tenn., Mr. Joel D. Huff, with whom I am personally acquainted, and who, being duly sworn according to law, says:

Sometime in the latter part of the year 1938 I was out checking routes from the Knoxville Post Office and upon returning from my day's work I found Mr. A. H. Hollingsworth, superintendent of carriers (who is now deceased) was very much disturbed over the fact that a carrier (Mr. Wiley King) had struck another carrier (Mr. Gerney M. Claiborne) on the lower part of his spine causing very severe pain. Mr. Hollingsworth told me all about the incident and remarked that it seemed that Mr. King would never grow up, and made mention of some of Mr. King's boyish ways.

I am unaware of any report being made to the United States Employees' Compensation Commission of the occurrence, as at that time this office had never used Form C. A. 1. In fact, I never saw Form C. A. 1 until after I became assistant superintendent, and if such form was used prior to March 1940, it was not used in my presence.

Further affiant saith not.

J. D. HUFF,
Assistant Superintendent of Mail.

Subscribed and sworn to before me this 17th day of September 1941.

[SEAL]

MAYME W. HOUSHOLDER,
Notary Public.

My commission expires 17th day of October 1944.

